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Ryan, Mason & Lewis, LLP Suite 205 1300 Post Road Fairfield, CT 06824				FADOK, MARK A
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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/620,407

Filing Date: July 16, 2003

Appellant(s): COFINO ET AL.

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Kevin M. Mason  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5/2/2006 appealing from the Office action  
mailed 6/20/2005.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Claimed Subject Matter***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Acknowledgement of the related Evidence Appendices**

Evidence appendix has been provided

**(9) Acknowledgement of the related Proceeding**

Related proceedings appendix has been provided

**(10) Evidence Relied Upon**

20010014868	Herz	8/2001
6598026	Ojha et al	7-2003
20030093355	ISSA	5-2003

**(11) Grounds of Rejections to be Reviewed**

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-2, 5, 10-13, 17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz et al. Patent Application Publication US 2001/0014868 (hereinafter referred to as "Herz").**

1. Referring to claim 1. Herz discloses a system for the automatic determination of custom prices and promotions. Herz further discloses:

- Central processing units, memory, a network interface, and a network: The core of the system for automatic determination of custom prices and promotions comprises one or more processors and a data storage element that comprises a plurality of databases. The shoppers' computer terminals are connected to a communication interface in the system via a data communication link. The link may involve other network devices (Herz: paragraph 0022).
- A bid agent process: The functions of the system are (1) to identify offer that are appropriate for each shopper, (2) help the shopper become informed about the available offers, and (3) to facilitate any or all of the necessary transactions (Herz: paragraph 0019). On-line navigation using an interface is used to

determine a shopper's goals. The shopper may browse through an online catalog, or search using keywords, forms, or menus. The shopper may indicate a particular type of offer in which he is interested (Herz: paragraph 0036). The Examiner notes that this process is capable of being adapted to determine whether one or more products are described in information communicated to the user, where the bid agent process is further adapted to determine whether the user chooses to receive bids on the one or more products described in the information and adapted to create a bid request if the user chooses to receive bids on the one or more products described in the information.

- A broker: the main computer selects offer that are likely to be profitable. The system calculates the likeliness of acceptance and the similarity between offers, by determining shopper profiles, previously accepted offers, other shoppers' profiles, present goals, etc. (Herz: paragraph 0037). The offers are presented to the shopper through text or graphics on the shopper's terminal. Offers that are directly relevant to the shopper's goals might be displayed more centrally than offers that the shopper may be interested in but has not explicitly asked for (Herz: paragraph 0038). The Examiner notes that this system is further capable of [sending] the bid request over one or more of the network interfaces to one or more stores, the broker using one or more values of a closeness measure to determine one or more related products associated with a selected product, where the one or more values of the closeness measure are determined using attributes of the selected product and the one or more related products, the bid request requesting a bid on the selected product and at least one of the one or more related products, and wherein the broker receives bids from the stores and resends the bids over one or more of the network interfaces to a user.

2. Referring to claim 2. Herz discloses:

- A bid protocol including identifier and price: Offer profiles include the title of the garment (Herz: paragraph 0055), the nominal price asked (Herz: paragraph 0066), and the discounted price asked (Herz: paragraph 0068).

3. Referring to claim 5. Herz discloses:

- Bids having one or more conditions: If the shopper elects not to accept the offer immediately, the system may provide the shopper with a coupon or other credential certifying the shopper is entitled to the same offer until some future date (Herz: paragraph 0038).

4. Referring to claim 10. Herz further discloses:

- Determination of closeness measure, determination of related product by comparing closeness measure to replacement value: Two offers are considered to be similar if the distance between their profiles is small according to this metric (Herz: paragraph 0147). Attribute weights specify the relative importance of the attributes, establishing similarities or differences (Herz: paragraph 0174). The

system selects subclusters that are closest to the offer profile. The process is iterated until the clusters selected are sufficiently small (Herz: paragraph 0191).

5. Referring to claim 11. Herz discloses:
  - Determination of closeness measure using weighted attributes: Two offers are considered to be similar if the distance between their profiles is small according to this metric (Herz: paragraph 0147). Attribute weights specify the relative importance of the attributes, establishing similarities or differences (Herz: paragraph 0174). The Examiner notes that similarity measurement subsystem has many variations (Herz: paragraph 0147), but that it is capable of [determining] the one or more values of the closeness measure, and where the broker determines each value of the closeness measure by determining weighted attributes by multiplying attributes of the selected product and the one or more related products by predetermined weight factors, the broker further determining each value of the closeness measure by determining a sum of differences between weighted attributes for the selected product and weighted attributes for one of the one or more related products.
6. Referring to claim 12. Herz discloses:
  - Values of closeness measure are stored in a memory, and at least one has been predetermined: It is possible to store different a set of attribute weights or set of quality weights for each shopper (Herz: paragraph 0175). Attribute weights and quality attribute weights may be set or adjusted by the system administrator or the individual shopper (Herz: paragraph 0176).
7. Referring to claim 13. Herz discloses:
  - Closeness measure is a distance: A “cluster diameter” is a real number determined by calculating the maximum distance between the offer profiles of any two offers in a given cluster (Herz: paragraph 0019).
8. Referring to claim 17. Herz discloses:
  - A history of bids is stored in a memory: The offer database includes information such as the product, price, and promotional material. A list of shoppers who have considered and accepted the offers may also be included (Herz: paragraph 0024).
9. Referring to claim 22. Claim 22 is rejected on the same rationale as set forth above.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 3-4, 6-9, 14-15, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Ojha et al. US Patent No. 6,598,026 (hereinafter referred to as "Ojha").**

Herz discloses the system above. Herz fails to disclose a re-bid if the user rejects a prior bid, one of the stores combining a product with one or more second products when submitting a corresponding bid, the bid agent transmitting the bid request to the broker, the bid agent sending a bid list to the user containing bids from stores on the selected product and related products, the broker compiling the bids from the stores into a bid list and send it to the bid agent, the bid agent notifying the user that the request is ready and the user can consent to submission of the request, and the stored bids are used for a later bid request. Ojha discloses a method and apparatus for brokering a transaction. Ojha discloses a method and apparatus that allows traditional negotiation between buyers and sellers via the Internet.

10. Referring to claim 3. Ojha further discloses:

- One of the stores re-bid if the user rejects a prior bid: The sellers offer is a counter offer that appears as a modified ask price in both the merchant's bid list interface and the buyer's shopping list interface. Where the buyer does not accept the seller's counteroffer, he may adjust his bid by entering a new bid. In any case, where the buyer and seller have not yet agreed on a price, additional rounds of negotiating may take place (Ojha: Column 18, lines 6- 23).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include a re-bid if the user rejects a prior bid as taught by Ojha in order to continue negotiation until an acceptable price is reached (Ojha: Column 4, lines 25-26).

11. Referring to claim 4. Ojha further discloses:

- One of the stores combines a product with one or more second products when submitting a corresponding bid: The merchant may respond to the buyer with a bundle bid or counter offer which reduces the ask price for any or all of the items if the buyer chooses to buy all of those items from that merchant (Ojha: Column 13, lines 30-35).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include one of the stores combining a product with one or more second products when submitting a corresponding bid as taught by Ojha in order to allow the seller to make deals on products even where such products are not originally identified by the buyer (Ojha: Column 13, lines 44-46).

12. Referring to claim 6. Ojha further discloses:

- The bid agent transmits the bid request to the broker: When the buyer finishes specifying the product and clicks "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products (Ojha: Column 9, lines 37-40). The Examiner notes

that "Go" is a widget that sends the search product information to a database invoking the computers programs to respond with relevant product offers.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the bid agent transmitting the bid request to the broker as taught by Ojha in order to make the submission available to a number of different sellers offering the same product (Ojha: Column 3, lines 11-12).

13. Referring to claim 7. Ojha discloses:

- The bid agent sends a bid list to the user containing bids from stores on the selected product and related products: Relevant product information is presented in the form of a list of products. Each entry in the list includes manufacturer, products information, and the product price (Ojha: column 9, lines 39-44). A seller may respond to a bid with an offer for a related product (Ojha: column 17, lines 60-61).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the bid agent sending a bid list to the user containing bids from stores on the selected product and related products as taught by Ojha in order to make a number of bids for the same or different products to a number of different sellers simultaneously (Column 3, lines 18-20) and to allow the seller to leverage its inventory in the related products to effect the sales of the primary product (Ojha: Column 18, lines 4-5).

14. Referring to claim 8. Ojha discloses:

- The broker compiles the bids from the stores into a bid list and sends it to the bid agent: A search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products (Ojha: Column 9, lines 37-40). The Examiner notes that the list is a response sent back to the agent requesting the information.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the broker compiling the bids from the stores into a bid list and send it to the bid agent as taught by Ojha in order to allow the buyer to conduct a number of simultaneous negotiations with different sellers for the same or multiple products even though the buyer intends to make only a single purchase (Ojha: column 4, lines 46-48).

15. Referring to claim 9. Ojha discloses:

- The bid agent notifies the user that the request is ready and the user can consent to submission of the request: For each shopping list created, the buyer may specify a variety of attributes, which affect the way in which each shopping list is used to facilitate transactions. The buyer may specify whether a particular item will automatically solicit quotes from a plurality of sellers once a corresponding entry is added to one of the buyer's shopping lists (Ojha: Column 10, lines 10-23). The Examiner notes that user is consenting to solicit quotes immediately or

at a later time depending on the users specification. The big agent is notifying the user that the request is ready buy prompting the user for action.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the bid agent notifying the user that the request is ready and the user can consent to submission of the request as taught by Ojha in order to allow the user to designate which item on the shopping list are posted as requests for quotes and others for conventional bids (Ojha: Column 6, lines 19-23).

16. Referring to claim 14. Herz discloses:

- The conditions include a selected product price: The offer profile includes a discounted price asked (Herz: paragraph 0068). If the shopper elects not to accept the offer immediately, the system may provide the shopper with a coupon or other credential certifying the shopper is entitled to the same offer until some future date (Herz: paragraph 0038).

17. Referring to claim 15. Herz discloses:

- Related products include cross-sell products: The similarity measurement subsystem includes a "cross-genre" technique for computing the distance between offer profiles (Herz: paragraph 0246). Similarity may be used as criteria for integrating two or more products into a single promotional offer. A cross-genre promotion involving a combination of two product promotions, which are metrically, close within that shopper's profile (Herz: paragraph 0247).

18. Referring to claim 18. Ojha discloses:

- Stored bids are used for a later bid request: The buyer may use market information to develop bid strategies. This market information may include demand data bid price histories, deal price histories, etc. (Ojha: Column 14, lines 6-12).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include using stored bids for a later bid request as taught by Ojha in order to help the buyer develop bidding strategies (Ojha: Column 14, lines 6-10).

19. Referring to claim 20. Herz discloses:

- A method for comparison-shopping over a network: An automatic determination of customized prices and promotions tailored to individual shoppers presented in the digital form to an on-line computer shopping system (Herz: paragraph 004). The system communicates via network connections (Herz: paragraph 0021).
- Determining whether one or more selected products are described in information communicated to the user: The functions of the system are (1) to identify offer that are appropriate for each shopper, (2) help the shopper become informed about the available offers, and (3) to facilitate any or all of the necessary transactions (Herz: paragraph 0019).

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- Using one or more values of a closeness measure to determine one or more related products associated with the one or more selected products, where the one or more values of the closeness measure are determined using attributes of the one or more selected products and the one or more related products: Two offers are considered to be similar if the distance between their profiles is small according to this metric (Herz: paragraph 0147). Attribute weights specify the relative importance of the attributes, establishing similarities or differences (Herz: paragraph 0174). The system selects subclusters that are closest to the offer profile. The process is iterated until the clusters selected are sufficiently small (Herz: paragraph 0191).

Herz discloses the system above. Herz fails to discloses determining whether the user chooses to receive bids on the one or more selected products described in the information, creating a bid request if the user chooses to receive bids on the one or more selected products described in the information, sending a bid request over one or more network interfaces to one or more stores, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products, receiving bids from the stores and resending the bids over one or more of the network interfaces to a user. Ojha discloses a method and apparatus for brokering transactions. Ojha further discloses:

- Determining whether the user chooses to receive bids on the one or more selected products described in the information: The buyer may specify whether a particular item will automatically solicit quotes from a plurality of sellers once a corresponding entry is added to one of the buyer's shopping lists (Ojha: Column 10, lines 10-23).
- Creating a bid request if the user chooses to receive bids on the one or more selected products described in the information: When the buyer finishes specifying the product and clicks "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products (Ojha: Column 9, lines 37-40). The Examiner notes that "Go" is a widget that sends the search product information to a database invoking the computers programs to respond with relevant product offers.
- Sending a bid request over one or more network interfaces to one or more stores, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products: When the buyer finishes specifying the product and clicks "Go," a search of a proprietary database is initiated in response to which relevant product information is presented in the form of a list of products (Ojha: Column 9, lines 37-40). In addition, the buyer may specify whether a particular item will automatically solicit quotes from a plurality of sellers once a corresponding entry is added to one of the buyer's shopping lists (Ojha: Column 10, lines 19-23).
- Receiving bids from the stores and resending the bids over one or more of the network interfaces to a user: The sellers offer is a counteroffer that appears as a modified ask price in both the merchant's bid list interface and the buyer's shopping list interface. Where the buyer does not accept the seller's

counteroffer, he may adjust his bid by entering a new bid. In any case, where the buyer and seller have not yet agreed on a price, additional rounds of negotiating may take place (Ojha: Column 18, lines 6- 23).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include determining whether the user chooses to receive bids on the one or more selected products described in the information, creating a bid request if the user chooses to receive bids on the one or more selected products described in the information, sending a bid request over one or more network interfaces to one or more stores, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products, receiving bids from the stores and resending the bids over one or more of the network interfaces to a user as taught by Ojha in order to allow the user to designate which item on the shopping list are posted as requests for quotes and others for conventional bids (Ojha: Column 6, lines 19-23), make a number of bids for the same or different products to a number of different sellers simultaneously (Column 3, lines 18-20), to allow the seller to leverage its inventory in the related products to effect the sales of the primary product (Ojha: Column 18, lines 4-5), and to continue negotiation until an acceptable price is reached (Ojha: Column 4, lines 25-26).

20. Referring to claim 21. Claim 21 is rejected on the same rationale as set forth above in claim 20.

**Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Issa Patent Application Publication US 2003/0093355.**

Herz discloses the system above. Herz fails to disclose the user consenting to receive bids from the stores before the bids from all the stores are sent, and the broker determining the stores from which to solicit bids. Issa discloses a method, system, and computer site for conducting an online auction. Issa's method allows for buyers to pool their buying power and entice competitive bidding from sellers.

21. Referring to claim 16. Issa further discloses:

- The user consents to receiving bids from stores before the bids from all the stores are sent: The buyer can specify early fulfillment of his order when all of his conditions are met but the auction has not expired (Issa: paragraph 0131).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the user consenting to receive bids from the stores before the bids from all the stores are sent as taught by Issa in order to make the buyers order available to be awarded/fulfilled (Issa: paragraph 0141).

22. Referring to claim 19. Issa further discloses:

- The broker determines the stores from which to solicit the bids: Each seller initially registers to establish a seller account (Issa: paragraph 0122). A "qualified seller" for a particular order is a seller who was not specified as

unacceptable and whose discount offer is equal to or exceeds the minimum discount specified (Issa: paragraph 0142).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz to include the broker determining the stores from which to solicit bids as taught by Issa in order to allow the site administrator to approve the sellers to sell the items on the present list and establish a list of sellers for each particular item (Issa: paragraph 0122).

**(12) Response to Argument**

In response to appellant's argument that Herz is not capable of providing the results features of the instant invention, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Further if the applicant is claiming these features to be software then they must be physically embodied on a medium in order to be statutory (MPEP 2106 IVB1(a)).

Appellant cites numerous times that the specific text cited by the examiner does not teach the feature. Appellant is reminded that the reference must be considered as a whole. 37 CFR 1.111 states that "the reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references". In response to this argument, the examiner notes Column 9, line 37 to Column 10, line 30. Ojha discloses a system and method

that allows a buyer to create a shopping list and designate “whether a particular item will automatically solicit quotes from a plurality of sellers.” The Examiner notes that the bid request is sent to the plurality of sellers to solicit quotes over the network shown in Figure 1.

Appellant argues that Issa does not teach “to send a bid request”. In response to this argument, the Examiner notes that Issa was not relied upon for this limitation. However, the Examiner further notes that Issa does state, “each seller is presented with a set of continually variable data, automatically and dynamically compiled from the aggregate of placed orders” (Issa: paragraph 0139). The Examiner notes that this suggests that multiple sellers are solicited to bid on orders or requests.

Appellant argues that Herz does not teach claim 10 and 11. The examiner disagrees and notes that the examiners rejection is believed to sufficiently provide a *prima facia* case.

### **(13) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

**(14) Evidence Appendix**

There is no evidence submitted pursuant to 1.130, 1.131 or 1.132 or entered by the examiner and relied upon by appellant.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



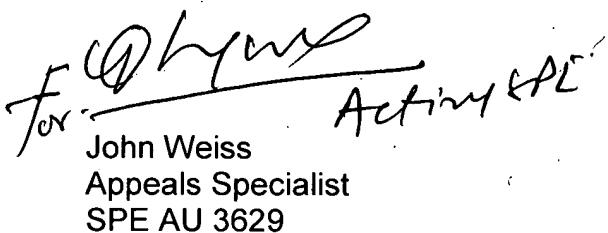
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July 7, 2006

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